

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHAMEIKA MOODY, as an individual and  
on behalf of others similarly situated,

Plaintiff,

v.

CHARMING SHOPPES OF DELAWARE,  
INC.; LANE BRYANT, INC.; CHARMING  
SHOPPES, INC.; and DOES 1 through 20,  
inclusive,

Defendants.

No. C 07-06073 MHP

**MEMORANDUM & ORDER**

**Re: Defendant Charming Shoppes,  
Inc.'s Motion to Dismiss for Lack of  
Personal Jurisdiction**

On October 11, 2007 plaintiff Shameika Moody ("Moody"), on behalf of herself and others similarly situated, brought the instant action against Charming Shoppes of Delaware, Inc. On January 18, 2008 plaintiff amended her complaint to add Lane Bryant, Inc. and Charming Shoppes, Inc. ("CSI") as defendants. Plaintiff alleges that while she was employed at a Lane Bryant retail store, some or all of the defendants: 1) failed to pay her overtime wages pursuant to California Labor Code sections 1194 et. seq.; 2) violated California Labor Code section 203; 3) violated California Labor Code section 226.7; 4) committed fraud; 5) violated California Labor Code section 226; and 6) engaged in unfair business practices as defined by California Business and Professions Code sections 17200 et. seq. Now before the court is CSI's motion to dismiss for lack of personal jurisdiction. The court has considered the parties' arguments fully, and for the reasons set forth below, the court rules as follows.

1 BACKGROUND

2 I. Procedural History

3 Plaintiff Shameika Moody was employed as an assistant manager at a Lane Bryant retail  
4 store in California from November 2006 to July 2007. Amended Complaint at 4. She alleges that  
5 during this time CSI and other defendants intentionally failed to pay her and other Lane Bryant  
6 employees overtime wages as required by California law. Id. at 10–11. She also alleges that CSI  
7 and other defendants required Lane Bryant employees to work through required meal breaks. Id. at  
8 12. As a result, plaintiff seeks to recover the unpaid balance of her overtime wages, compensation  
9 for missed meal periods, interest, waiting time penalties, attorneys fees and costs of suit. Id. at  
10 17–18.

11  
12 II. Jurisdictional Facts

13 Lane Bryant, Inc. (“Lane Bryant”), where plaintiff was employed, is a wholly-owned  
14 subsidiary of CSI, a publicly-traded company incorporated and headquartered in Pennsylvania.  
15 Lane Bryant owns and operates all Lane Bryant stores in California. Ackley Dec., ¶ 3; Sullivan  
16 Dec., ¶ 10. All of Lane Bryant’s key operational officers work out of its corporate headquarters in  
17 Columbus, Ohio and none of these people are directors, officers or managers of CSI. Ackley Dec.,  
18 ¶ 2. According to the vice-president of human resources for Lane Bryant, the business operations of  
19 Lane Bryant stores are independent of CSI. Id., ¶ 3. The same individual averred that Lane Bryant,  
20 through its management, establishes the policies and practices which apply to Lane Bryant  
21 employees. Id., ¶¶ 4–6.

22 CSI, Lane Bryant’s parent company, has a number of direct and indirect operating  
23 subsidiaries which own and operate retail stores in California. Sullivan Dec., ¶¶ 3, 8. CSI’s contacts  
24 with California do not include a physical office, mailing address, or bank accounts. Id., ¶¶ 6–7. CSI  
25 is not incorporated in and has no physical presence in California, does not make sales in California,  
26 does not solicit or engage in business in California, does not serve the State’s markets, does not have  
27 a designated agent for service of process in California and does not hold a license in California. Id.

1 Indeed, unlike its subsidiary—Charming Shoppes of Delaware, Inc.—CSI does not send money,  
2 paychecks, wage statements or payroll taxes into the state of California. Id., ¶ 9.

3 CSI purports to control Lane Bryant only through the election of Lane Bryant’s board of  
4 directors. Id., ¶ 8. Lane Bryant and CSI have one director in common and eleven of Lane Bryant’s  
5 twenty-three officers are also officers of CSI. Id., ¶ 4. There is no evidence as to how much control  
6 is exerted over Lane Bryant through this arrangement; however, CSI does report the financial results  
7 of its subsidiaries on a consolidated basis. Id., ¶ 4.

8 CSI also often references Lane Bryant in: 1) filings with the Securities and Exchange  
9 Commission (“SEC”); 2) press releases; and 3) its website. It states that it operates over 2,400 retail  
10 stores under the names Lane Bryant, Fashion Bug and others, and that employees of its various retail  
11 brands are employees of CSI. Specifically, in SEC filings, its Annual Report and on its website, CSI  
12 states: 1) “we employed approximately 30,200 employees,” “we hire,” and “our employees” when  
13 referring to employees of its subsidiaries, Hubble Dec., Exh. A at 12; 2) it has “30,000 Charming  
14 Shoppes associates worldwide,” id., Exh. B at 17; 3) “Charming Shoppes, Inc. employs  
15 approximately 30,000 associates,” id., Exh. L. The SEC filing, however, also states that “[t]he terms  
16 ‘the Company,’ ‘we,’ and ‘us,’ and ‘our’ refer to Charming Shoppes, Inc., and, where applicable, our  
17 consolidated subsidiaries.” Id., Exh. A at 28.

18 CSI states that it takes pride in paying “our store associates throughout the country a highly  
19 competitive wage.” Id., Exh. S at 1. Its website details different job categories that are available to  
20 potential employees, including loss prevention, corporate, finance, technology services, logistics and  
21 distribution, customer service, marketing and public relations, credit, and real estate, store design  
22 and construction. Id., Exh. T. The website refers potential applicants interested in a position of its  
23 more than 2,400 retail stores to complete an application entitled “Charming Shoppes, Inc.  
24 Employment Application,” wherein they check a box indicating the division in which the applicant  
25 seeks employment. Id., Exh. O. The website also lists the benefits available to these potential  
26 employees, where CSI makes representations that it “absorb[s] the majority of the cost,” pays for  
27 certain types of insurance and has an employee stock option purchase plan. Id., Exh. P.

1 In addition, the handbook provided to Lane Bryant associates states:

2 Nothing in this book or any other document not approved as a contract by the  
3 Chairman of the Board or the Executive Vice President of Human Resources at  
4 Charming Shoppes, Inc., is to be construed as creating a contract or term of  
5 employment.

6 Id., Exh. D at 1. The handbook goes on to state that Lane Bryant is a “brand” of CSI and refers to  
7 phone numbers “set up for employees of Charming Shoppes.” Id. at 40. CSI also directly  
8 communicates with employees at the various retail stores. For instance, it sent a letter to all such  
9 employees in February 2008 discussing changes in executive management and CSI’s decision to  
10 close certain retail locations. Id., Exh. C, Exh. 99.2 thereto.

11 CSI frequently represents that it operates the retail stores. For instance, its SEC filings state  
12 that “[a]s of February 2, 2008, we operated 2,409 stores in 48 states” and that “[a]ll retail stores are  
13 operated under our direct management.” Id., Exh. A at 1, 4; see also id., Exh’s. E, F, H–J (press  
14 releases stating CSI “operates” the retail stores). The SEC filings also state that CSI is continuing its  
15 efforts “to selectively reduce store payroll hours” id., Exh. A at 41, and that its board of directors  
16 and management team have “[t]ightened inventory levels . . . reducing same store inventories,” id.,  
17 Exh. J.

18 The individual in charge of the Lane Bryant brand reports to CSI. Id., Exh. H at 1. Other  
19 executive officers also report to CSI. Id., Exh. G. There is no argument that CSI sits atop the  
20 reporting hierarchy with respect to its various brands, including Lane Bryant.

21 Finally, CSI purportedly has a distribution facility in Santa Fe Springs, California where it  
22 employs individuals for quality control purposes. Id., Exh’s. U, W, X. CSI, however, avers that the  
23 distribution facility is owned by a third party and the employees there are employees of Charming  
24 Shoppes of Delaware, Inc.—not CSI. Sullivan Supp. Dec., ¶¶ 4–5.

## 25 LEGAL STANDARDS

26 Plaintiff bears the burden of proving that the court may exercise personal jurisdiction over  
27 the defendant. Schwarzenegger v. Fred Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). If the  
28 jurisdictional challenge is based solely on written papers, plaintiff must make a prima facie showing

1 of jurisdiction. Harris Rutsky & Co. Ins. Servs. v. Bell & Clements, Ltd., 328 F.3d 1122, 1129 (9th  
2 Cir. 2003). If, however, the court holds an evidentiary hearing on the issue, then the burden on the  
3 plaintiff increases to a preponderance of the evidence. Rano v. Sipa Press, Inc., 987 F.2d 580, 587  
4 n.3 (9th Cir. 1993).

5 Where there is no federal standard establishing personal jurisdiction, district courts apply the  
6 jurisdictional standards of the state in which the district court sits. Panavision Int'l, L.P. v. Toeppen,  
7 141 F.3d 1316, 1320 (9th Cir. 1998). California courts may properly exercise personal jurisdiction  
8 to the extent allowed by the Due Process Clause of the United States Constitution. Threlkeld v.  
9 Tucker, 496 F.2d 1101, 1103 (9th Cir. 1974). Courts may exercise personal jurisdiction over a  
10 nonresident defendant, consistent with due process, if the defendant has “certain minimum contacts”  
11 with the forum state “such that the maintenance of the suit does not offend traditional notions of fair  
12 play and substantial justice.” Int'l. Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (internal  
13 quotations omitted).

14 If a nonresident defendant has contacts with the forum state that are “substantial” or  
15 “continuous and systematic,” then courts may exercise general personal jurisdiction over the  
16 defendant without regard to whether the action arises from the defendant’s activities in the forum  
17 state. Perkins v. Benguet, 342 U.S. 437 (1952). If a nonresident defendant’s activities within the  
18 forum state are less substantial, then courts may still exercise specific personal jurisdiction where the  
19 action arises out of or is related to the defendant’s particular activities within the forum state.  
20 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n.8 (1984).

## 21 22 DISCUSSION

### 23 I. General Jurisdiction

24 CSI asserts that its contacts with California are not sufficient to establish general personal  
25 jurisdiction because CSI lacks an actual, physical presence in California. Plaintiff argues that CSI  
26 has significant, systematic and continuous contacts with California resulting from its “employment”  
27 of the employees at the various retail stores “operated” by CSI.  
28

1 The Ninth Circuit interprets Perkins and Helicopteros as establishing a “fairly high standard”  
 2 for general jurisdiction. Brand v. Menlove Dodge, 796 F.2d 1070, 1073 (9th Cir. 1986); see also  
 3 Amoco Egypt Oil Co. v. Leonis Navigation Co., 1 F.3d 848, 851 n.3 (9th Cir. 1993) (“[w]e have  
 4 stated that the Perkins holding that the cause of action need not arise out of the defendant’s activities  
 5 in the forum is limited to its unusual facts and regularly have declined to find general jurisdiction  
 6 even where the contacts were quite extensive”) (internal quotations omitted). Factors weighing  
 7 heavily in the general jurisdiction analysis include whether the defendant: 1) is incorporated in the  
 8 state; 2) makes sales in the state; 3) solicits or engages in business in the state; 4) serves the state’s  
 9 markets; 5) designates an agent for service of process in the state; or 6) holds a license in the state.  
 10 Bancroft & Masters, Inc. v. Augusta Nat’l, Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). This standard  
 11 requires not only a showing of “substantial” or “continuous and systematic” contacts, but also  
 12 reasonableness in requiring the defendant to defend itself in the forum state. Amoco, 1 F.3d at 851  
 13 n.2 (citing Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987)).

14 Plaintiff argues that defendant’s admissions regarding employment and operation of retail  
 15 stores subjects it to general jurisdiction in California because they demonstrate that CSI “makes  
 16 sales, solicits or engages in business in the state, [and] serves the state’s markets.” Bancroft, 223  
 17 F.3d at 1086. Plaintiff’s conclusion, however, does not follow. CSI’s statements to the SEC are  
 18 merely inclusive statements that contend that Lane Bryant’s employees are its own employees. This  
 19 is a common business practice, and as the sole owner of Lane Bryant, CSI may make generic  
 20 statements about Lane Bryant’s employees and the operation of Lane Bryant stores. See Calvert v.  
 21 Huckins, 875 F. Supp. 674, 678–79 (C.D. Cal. 1995); see also Sonora Diamond Corp. v. Superior  
 22 Court, 83 Cal. App. 4th 523, 550 (2000). Defendant has not pointed to any case which holds that  
 23 generic admissions can subject a party to in personam jurisdiction. Similarly, collective references  
 24 in press releases do not establish in personam jurisdiction either. See F. Hoffman-LaRoche v.  
 25 Superior Court, 130 Cal. App 4th 782, 801 (2005) (“under California law, consolidated reporting,  
 26 joint employment of professional services, and the use of ‘we’ or ‘the company’ are typical and  
 27 actually expected of affiliated or wholly owned companies, and such facts do not establish agency  
 28

1 for purposes of jurisdiction. The evidence here of joint reporting or collective media releases did not  
2 go beyond this normal incidence of ownership that is contemplated within the parent/subsidiary  
3 context.”).

4 In addition, the handbook passage cited above—stating that the handbook or documents not  
5 approved by CSI are insufficient to create an employment relationship—does not create jurisdiction.  
6 The passage merely states that the handbook does not create a contract or term of employment. It  
7 then allows for documents approved by CSI to constitute contracts or terms of employment. This  
8 does not rise to continuous or systematic contacts. Indeed, a subsidiary’s use of policies and  
9 handbooks created by the parent is insufficient to establish personal jurisdiction. See Arce v.  
10 Aramark Corp., 239 F. Supp. 2d 153, 172 (D. Puerto Rico 2003); Hvide Marine Int’l, Inc. v.  
11 Employers Ins. of WAUSAU, 724 F. Supp. 180, 187 (S.D.N.Y. 1989).

12 Plaintiff’s reliance on Covad Commc’ns Co. v. Pac. Bell, 1999 U.S. Dist. LEXIS 22789, at  
13 \*21–\*23 (N.D. Cal. Dec. 14, 1999), is to no avail. Even though the court there held that “[g]iven the  
14 wide array of documents presented to the Court, representing either that SBC is present in California  
15 or is, in fact, more than a simple holding company, the Court finds that plaintiff has stated a prima  
16 facie case of personal jurisdiction over SBC,” the court went on to say that it “does not agree,  
17 however, that personal jurisdiction may be exercised under an ‘agency’ theory.” Id. Jurisdiction  
18 was therefore premised on SBC’s presence in California due to the maintenance of an office there,  
19 SBC’s recruitment of employees in California, and the fact that SBC signed 554 interconnection  
20 agreements and spent \$ 1.3 billion to open its local phone markets. The case at bar is obviously  
21 factually distinguishable. Tuazon v. R.J. Reynolds Tobacco Co., 433 F.3d 1163, 1175 (9th Cir.  
22 2005), is similarly factually inapposite—unlike in that case, CSI does not have a permanent office  
23 and workforce in California nor is it licensed to do business in California. Id. at 1174.

24 Finally, the alleged facility maintained by CSI in California does not establish general  
25 jurisdiction. The Court must resolve disputed jurisdictional facts found in affidavits and declarations  
26 regarding jurisdictional issues in favor of plaintiff. See Am. Tel. & Telegraph Co. v. Compagnie  
27 Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir. 1996). However, the declarations here demonstrate  
28



1 that a facility exists in Southern California and that either CSI or Charming Shoppes of Delaware,  
2 Inc. has some permanent employees there. CSI denies employing these individuals. Plaintiff has  
3 not put forth any evidence that the employees are in fact CSI employees and not employees of  
4 Charming Shoppes of Delaware, Inc. Consequently, with no evidence that it has direct employees in  
5 the state of California, CSI is not subject to general jurisdiction on that basis.

6 In sum, based on the evidence presented, CSI's contacts with California are insufficient to  
7 support general jurisdiction. Indeed, no actual conduct or contact in California has been  
8 demonstrated. Therefore, the court does not reach the reasonableness prong.

9  
10 II. Specific Jurisdiction

11 Specific jurisdiction exists if: 1) the defendant has performed some act or consummated  
12 some transaction within the forum or otherwise purposefully availed himself of the privileges of  
13 conducting activities in the forum; 2) the claim arises out of or results from the defendant's  
14 forum-related activities; and 3) the exercise of jurisdiction is reasonable. Bancroft, 223 F.3d at  
15 1086. The first prong of this test requires that the defendant either purposefully avail itself of the  
16 privileges of conducting activities in the forum state or purposefully direct its activities toward the  
17 forum state. Schwarzenegger, 374 F.3d at 802. Typically, evidence of purposeful availment will  
18 include "action taking place in the forum that invokes the benefits and protections of the laws in the  
19 forum," while evidence of purposeful direction will include "action taking place outside the forum  
20 that is directed at the forum." Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1155 (9th Cir. 2006).

21 Purposefully directed activities are analyzed under the Calder effects test. Calder v. Jones,  
22 465 U.S. 783 (1984). The Ninth Circuit has interpreted Calder to impose three requirements. The  
23 defendant must have 1) committed an intentional act, 2) expressly aimed at the forum state, which  
24 3) causes harm that the defendant knew was likely to be suffered in the forum state. Yahoo! Inc. v.  
25 La Ligue Contre Le Racisme et L'Antisemitisme, 433 F.3d 1199, 1206 (9th Cir. 2006) (citing  
26 Schwarzenegger, 374 F.3d at 803). It is important to consider the "extent of the defendant's contacts  
27 with the forum and the degree to which the plaintiff's suit is related to those contacts" because "[a]  
28



1 strong showing on one axis will permit a lesser showing on the other.” Id. at 1210.

2 A. Purposeful Availment/Purposeful Direction

3 CSI claims not to have performed any intentional acts or engaged in any activities directed at  
4 California. Plaintiff first argues that CSI’s admission that it has employees and operates retail stores  
5 in California constitute a basis for specific jurisdiction. For the same reasons as above, these  
6 “admissions” are not sufficient to rise to purposeful availment. Plaintiff also argues that personal  
7 jurisdiction has been established because the corporate relationship between CSI and Lane Bryant  
8 allows this court to impute Lane Bryant’s contacts with California to CSI.

9 While CSI is correct that personal jurisdiction cannot be premised on corporate affiliation or  
10 stock ownership alone, a corporate relationship that extends beyond mere corporate affiliation—such  
11 as an agency or alter ego relationship—will suffice. Harris Rutsky, 328 F.3d at 1134–35 (finding  
12 that although corporate relationship did not establish jurisdiction, single act of inconsistency with  
13 corporate relationship was enough to allow for jurisdictional discovery). This can be established  
14 through pervasive and continual control over the subsidiary which effectively renders the subsidiary  
15 an instrumentality of the parent. Sonora Diamond Corp., 83 Cal. App. 4th at 541–42.

16 The Covad decision, which plaintiff cites, clarified the standard:

17 A parent company must exercise substantial day-to-day control of its subsidiary in  
18 order for its subsidiary to be viewed as its agent. . . . The ‘agency test is satisfied by a  
19 showing that the subsidiary functions as the parent corporation’s representative, that  
20 it performs services that are sufficiently important to the foreign corporation that if it  
21 did not have a representative to perform them, the corporations’ own officials would  
22 undertake to perform substantially similar services.’

23 1999 U.S. Dist. LEXIS 22789, at \*21–\*23 (quoting Doe, I v. Unocal Corp., 27 F. Supp. 2d 1174  
24 (C.D. Cal 1998)). The court even stated that “neither confusing or misleading brand advertising nor  
25 shared legal counsel is sufficient to show agency.” Id., at \*23

26 Generic language on CSI’s website and in its press releases simply do not rise to the day-to-  
27 day control required to impute the subsidiary’s contacts to the parent. Similarly, SEC filings which  
28 specify strategic goals, such as a reduction in payroll hours or same store inventories, do not  
demonstrate control over day-to-day operations of the individual brands. Indeed, the parent  
company is well within its rights to delineate goals the subsidiary must accomplish and enforce the

1 same by creating a hierarchy with accountability. Further, CSI's reporting on its subsidiaries'  
2 financial results does not establish the existence of an alter ego relationship. Doe, I v. Unocal Corp.,  
3 248 F.3d 915, 928 (9th Cir. 2001). The same applies to the reference of subsidiaries as "divisions."  
4 Id.

5 Concat LP v. Unilever, PLC, 350 F. Supp. 2d 796, 812 (N.D. Cal. 2004), does not help  
6 plaintiff. There, "Unilever's own literature explain[ed] that the companies within the group act as a  
7 single entity with a single management team,' that they co-operate in all areas, and -- of signal  
8 importance -- that they exchange all relevant business information." Id. There is no such evidence  
9 here. Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc., 99 Cal. App. 4th 228, 245 (2002), is also  
10 unhelpful since it simply recites the applicable standard.

11 In sum, plaintiff has not been able to demonstrate that Lane Bryant is an "incorporated  
12 division" of CSI, even though CSI occasionally refers to Lane Bryant as a division or brand. Indeed,  
13 there is no evidence that corporate formalities have been ignored, that Lane Bryant is under-  
14 capitalized or that CSI exerts control over Lane Bryant's day-to-day operations. At best, plaintiff  
15 has been able to demonstrate that CSI may provide certain shared services for its brands, such as a  
16 consolidated application process or a template employee handbook. This does not demonstrate that  
17 the same was forced upon Lane Bryant by CSI or that the practices at issue in this case were dictated  
18 by CSI. As a result, this is an improper basis for jurisdiction. The court's conclusion stands even if  
19 all of CSI's subsidiaries use the same employment application process or substantively similar  
20 employee handbooks. To the extent CSI provides shared services, they seem to be designed to  
21 exploit economies of scale.

22 Since CSI does not meet the first prong, analysis of the other two prongs of specific  
23 jurisdiction is unnecessary.

24 Finally, plaintiff has made no credible argument that evidence of day-to-day control exists or  
25 would be discoverable.

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2 CONCLUSION

3 For the foregoing reasons, CSI's motion to dismiss for lack of personal jurisdiction is  
4 GRANTED. This dismissal is without prejudice to a motion to amend to add CSI if and when there  
5 is evidence to support general or specific jurisdiction consistent with this order.

6 IT IS SO ORDERED.

7  
8 Dated: May 16, 2008

  
\_\_\_\_\_  
MARILYN HALL PATEL  
United States District Court Judge  
Northern District of California